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Supreme Court, U.S.
FILED

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No.

IN THE

SUPREME COURT OF THE UNITED STATES

WEN-CHOUH LIN,

PETITIONER

VS.

ANITA C.S. LIN,

RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO
the Supreme Court of North Carolina and
the North Carolina Court of Appeals

PETITION FOR WRIT OF CERTIORARI

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40pp

QUESTIONS PRESENTED FOR REVIEW

1. Whether the trial court deprived the petitioner of his property without due process of law and the equal protection of the laws by ordering permanent alimony in 1991 before equitable distribution in 1997, while North Carolina law provides that equitable distribution should be decided first.

2. Whether the trial court deprived the petitioner of his retirement benefits without due process of law and the equal protection of the laws by ordering equitable distribution in 1997 after the judgment of absolute divorce in 1994, while North Carolina law provides that an absolute divorce shall destroy the right of a spouse to an equitable distribution.

3. Whether that the Court of Appeals and the Supreme Court of North Carolina dismissed the petitioner's appeals and petitions was a mere device to prevent the review of the foregoing federal questions.

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IN THE
SUPREME COURT OF THE UNITED STATES

WEN-CHOUH LIN,

PETITIONER

VS.

ANITA C.S. LIN,

RESPONDENT

PETITION FOR A WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgments below.

OPINIONS BELOW

The Orders of the Supreme Court of North Carolina denying review appear at Appendices F-G to the petition. The Orders of the North Carolina Court of Appeals denying review appear at Appendices D-E to the petition. The judgments of the trial courts appear at Appendices A-C to the petition.

JURISDICTION

The date on which the Supreme Court of North Carolina decided my cases was December 2, 1999. Copies of those Orders appear at Appendices F-G at 19a-22a.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISIONS, STATUTES, AND RULES

1. The Constitution of the United States provides in part:

> Amendment XIV, § 1. [N]or shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

2. Section 19 of the Constitution of North Carolina, Article I provides in part:

> No person shall be ... deprived of his life, liberty, or property, but by the law of the land. No person shall be denied the equal protection of the laws.

3. The General Statutes of North Carolina provide in part:

> § 50-11(a) After a judgment of divorce from the bonds of matrimony, all rights arising out of the marriage shall cease and determine ....
>
> ....
>
> (e) An absolute divorce obtained within this State shall destroy the right of a spouse to an equitable distribution of the property under G.S. 50-20 unless the right is asserted prior to judgment of absolute divorce ....

4. Civil District Rules 14th Judicial District (14CDR) of North Carolina (1991) provide in part:

> 16.2 Unless a consent order for permanent alimony is filed or an extension of time is otherwise ordered by the presiding judge, the moving party in a case involving both equitable distribution and permanent alimony shall schedule the case for trial of the claim for permanent alimony through the Trial Court

Administrator's Office within sixty (60) days after the resolution of the claim for equitable distribution.

STATEMENT OF THE CASE

In reply to my Complaint for Absolute Divorce, File No. 90-CVD-04498, the respondent filed Answer and Counterclaim for equitable distribution, alimony pendente lite, and alimony on December 18, 1990. (Appendix A at 1a) The trial court ordered alimony pendente lite on February 6, 1991. (Appendix A at 2a) The trial court entered Judgment for permanent alimony and made said counterclaim for equitable distribution without prejudice on October 11, 1991. (Appendix A at 6a)

In a later case, File No. 94-CVD-2124, upon the respondent's motion, the trial court entered Summary Judgment of Absolute Divorce on December 13, 1994, further ordering that equitable distribution should remain pending in the prior case, File No. 90-CVD-04498. (Appendix B at 7a, 9a)

On January 8, 1997, the trial court entered Order of Distribution of Marital Property, awarding 55% of my retirement benefits to the respondent. (Appendix C at 10a, 13a) I appealed, but the North Carolina Court of Appeals dismissed my appeal as an unpublished opinion. I respectfully petitioned the Supreme Court of North Carolina for a discretionary review in conjunction with a Notice of Appeal. The Supreme Court of North Carolina dismissed my appeal and denied me a discretionary review. I respectfully petitioned this Court for a writ of certiorari in vain. See my Petition for a Writ of Certiorari in this Court, No. 97-2008. I respectfully petitioned the Supreme Court of North Carolina and this Court for a writ of certiorari, on the ground that the North Carolina Court of Appeals dismissed my appeal because of my brief containing approximately 99 characters

per line. See my Petition for a Writ of Certiorari in this Court, No. 98-1659. This Court denied me a writ of certiorari. I respectfully petitioned the Supreme Court of North Carolina to review the decision of North Carolina Court of Appeals, which addressed the distribution of my retirement plan and concluded my remaining assignments of error to be similarly without merit. The Supreme Court of North Carolina denied my petition. I respectfully petitioned this Court for a writ of certiorari in vain. See my Petition for a Writ of Certiorari in this Court, No. 99-856.

On the other hand, I respectfully petitioned the North Carolina Court of Appeals for reviewing the judgments appended herein as A-B at 1a-9a. See my Application in this Court, No. 99A275. I prayed as follows:

> Plaintiff is over 65 years old. This case has dragged on for almost 10 years. No other adequate remedy is available to review a judgment like this one, which was entered contrary to law. He respectfully prays this Court to review the following issues:
>
> I. THE TRIAL COURT ERRED IN ORDERING PERMANENT ALIMONY IN 1991 BEFORE ORDERING EQUITABLE DISTRIBUTION IN 1997 WHEN BOTH PERMANENT ALIMONY AND EQUITABLE DISTRIBUTION WERE REQUESTED IN 1990.
>
> Civil District Rules 14th Judicial District (14CDR) (1991) provides in part:
>
> > 16.2 Unless a consent order for permanent alimony is filed or an extension of time is otherwise ordered by the presiding judge, the moving party in a case involving both equitable distribution and permanent alimony

> shall schedule the case for trial of the claim for permanent alimony through the Trial Court Administrator's Office within sixty (60) days after the resolution of the claim for equitable distribution.

Id. at 11. General Rules of Practice for the Superior and District Court Rule 22 provides that all trial judges shall observe and enforce the local rules in effect. Furthermore, in *Talent v. Talent*, the court instructed the lower court:

> When both permanent alimony and equitable distribution are requested as in this case, the equitable distribution should be decided first. *See Capps v. Capps*, 69 N.C. App. 755, 318 S.E. 2d 346 (1984); *see also McIntosh v. McIntosh*, 74 N.C. App. 554, 328 S.E. 2d 600 (1985). The court, in determining whether a party is entitled to alimony, must consider the estates of both parties. Until it is decided how the marital property is to be distributed, the parties' estates cannot definitely be determined.

76 N.C. App. 545, 556, 334 S.E.2d 256, 263 (1985).

The foregoing Rules and decisions of this Court clearly held that, when both permanent alimony and equitable distribution are requested, the equitable distribution must be decided first. In this case, the trial court entered Judgment for permanent alimony and made equitable distribution without prejudice on October 11, 1991 before Order of Distribution of Marital Property entered January 8, 1997 when both permanent alimony and equitable distribution were

requested on December 18, 1990. (Attachments, pp. 4-7, 13-29) The trial court clearly acted contrary to said Rules and the decisions of this Court. Thus, said Judgment shall be vacated.

II. PLAINTIFF WAS DEPRIVED OF HIS PROPERTY WITHOUT DUE PROCESS OF LAW AND THE EQUAL PROTECTION OF THE LAWS.

The foregoing Rules and decisions of this Court show that the trail court acted contrary to law. Thus, the trail court ordered plaintiff to pay permanent alimony and attorney's fees before equitable distribution to deprived him of his property without due process of law and the equal protection of the laws.

....

WHEREFORE, PLAINTIFF RESPECTFULLY PRAYS that this Court issue its writ of certiorari to the Durham County District Court to permit review the judgment above specified, upon errors stated as follows:

1. The trial court's Judgment for permanent alimony before equitable distribution when both were requested, on the ground that the trial court acted contrary to the foregoing Rules and decisions of this Court. (Attachments, pp. 4-7, 13-29)
2. The trial court ordered plaintiff to pay permanent alimony and attorney's fees before equitable distribution when both were requested, on the ground that the trial court deprived him of his property without due process of law and the equal protection of the laws. (Attachments, pp. 4-7, 13--29)

Petition for Writ of Certiorari, No. COAP99-383 at 2-5.

At the same time, I also respectfully petitioned the North Carolina Court of Appeals for reviewing the further order of equitable distribution in Summary Judgment of Absolute Divorce (Appendix B) as follows:

I. THE TRIAL COURT ACTED CONTRARY TO G.S. § 50-11 IN FURTHER ORDERING THAT THE PLAINTIFF'S EQUITABLE DISTRIBUTION SHOULD REMAIN PENDING IN FILE NO. 90-CVD-4498 AT THE TIME OF JUDGMENT OF ABSOLUTE DIVORCE.

In *Howell v. Howell*, 321 N.C. 87, 91, 361 S.E.2d 585, 588 (1987), the Supreme Court of North Carolina ruled that the only question before the trail court when a divorce judgment was entered was whether to grant or not to grant the divorce; that allowing Ms. Howell to the extent of claiming for equitable distribution would negate the provisions of N.C.G.S. § 50-11 by which the legislature has prescribed the legal effects of judgments of absolute divorce; and that these effects are beyond the power of a court to change.

In this case, the trial court granted the divorce and further ordered that the plaintiff's equitable distribution should remain pending in File No. 90-CVD-4498. (Attachments, p. 15) Thus, relying on the decision of *Howell v. Howell*, said further order was entered contrary to law and shall be voided.

II. NO EVIDENCE SUPPORTS THE FURTHER FINDING OF THE TRIAL COURT THAT THERE WAS A CLAIM FOR EQUITABLE DISTRIBUTGION PENDING IN FILE NO. 90-CVD-4498 AT THE TIME OF SUMMARY JUDGMENT OF ABSOLUTE DIVORCE.

Evidence shows that the plaintiff (defendant in said File [No. 90-CVD-04498]) filed Motion for Equitable Distribution on September 19, 1996, which could not be pending at the time of Summary Judgment of Absolute Divorce entered December 13, 1994. (Attachments, pp. 13, 15-17) Said further finding was contrary to the evidence, and thus said further order shall be voided.

III. THE TRIAL COURT ERRED IN FURTHER ORDERING THAT THE PLAITIFF'S EQUITABLE DISTRIBUTION SHOULD REMAIN PENDING IN FILE NO. 90-CVD-4498.

In *Lockamy v. Lockamy*, the court held:

> We note that in its order of absolute divorce, the trial court found that "all matters of ... Equitable Distribution of property are reserved for future disposition in separate pending action." However, no such separate pending action existed at the time of the judgment of divorce ... Jurisdiction over the subject matter cannot be conferred upon a court by consent, waiver or estoppel. *Pulley v. Pulley*, 255 N.C 423, 121 S.E.2d 876, *aff'd*, 256 N.C. 600, 124 S.E.2d 571, *appeal dismissed by*, 371 U.S. 22, 83 S.Ct. 120, 9 L.Ed.2d 96 (1961).

111 N.C. App. 260, 262, 432 S.E.2d 176, 177 (1993).

In this case, the trial court entered Summary Judgment of Absolute Divorce on December 13, 1994. (Attachments, pp. 13-15) The plaintiff (defendant in said File) filed Motion for Equitable Distribution on September 19, 1996. (Attachments,

pp. 16-17) Therefore, this case and *Lockamy v. Lockamy* are on all fours. The trail court's further order was contrary to the decision of *Lockamy v. Lockamy* in that "Jurisdiction over the subject matter cannot be conferred upon a court by consent, waiver or estoppel." *Id.* Thus, said further order shall be voided.

IV. DEFENDANT WAS DEPRIVED OF RIGHTS TO DUE PROCESS OF LAW AND THE EQUAL PROTECTION OF THE LAWS.

The foregoing facts show that the trail court acted contrary to the decisions of *Howell v. Howell* as well as *Lockamy v. Lockamy* and made further finding without evidence. Thus, the trail court further ordered to deprive defendant of his rights to due process of law and the equal protection of the laws.

....

WHEREFORE, DEFENDANT RESPECTFULLY PRAYS that this Court issue its writ of certiorari to the Durham County District Court to permit review the further order of the judgment of absolute divorce above specified, upon errors stated as follows:

1. The trial court's further order in Summary Judgment of Absolute Divorce, on the ground that the trial court acted contrary to the decision of *Howell v. Howell.* (Attachments, pp. 13-15)
2. That portion of the trial court's further finding which provides that "there is now pending in this Court a claim ... for equitable distribution, to wit, No. 90-CVD-4498", on the ground that there was no evidence to support said finding. (Attachments, p. 14)

3. The trial court's further order in Summary Judgment of Absolute Divorce, on the ground that the trial court acted contrary to the decision of *Lockamy v. Lockamy*. (Attachments, pp. 13-15)
4. The trial court further ordered contrary to the decisions of *Howell v. Howell* as well as *Lockamy v. Lockamy* and made further finding without evidence, on the ground that the trial court deprived defendant of his rights to due process of law and the equal protection of the laws. (Attachments, pp. 14-15);

Petition for Writ of Certiorari, No. COAP99-384 at 3-6.

The North Carolina Court of Appeals denied my petitions. (Appendices D-E at 17a-18a) I respectfully petitioned the Supreme Court of North Carolina for reviewing said Orders. I incorporated the foregoing quotations in my petitions. In addition, I prayed as follows:

> II. NO OTHER ADEQUATE REMEDY IS AVAILABLE TO REVIEW A JUDGMENT LIKE THIS ONE, WHICH WAS ENTERED CONTRARY TO LAW, HAS SIGNIFICANT PUBLIC INTEREST, AND INVOLVES A SUBSTANTIAL CONSTITUTIONAL QUESTION.
>
> "An erroneous judgment, which is one entered contrary to law, can be corrected only by appeal." 19 NC Index 4th, § 477 at 266, and cases there cited ....
>
> The foregoing facts, Rules, and the decisions of the Court of Appeals show that the judgment for permanent alimony was entered contrary to law, yet the Court of Appeals denied his petition without any fair or substantial support. (Attachments, p. i)

> Moreover, the Court of Appeals dismissed his appeal on the ground that his brief contains approximately 99 characters per line as an unpublished opinion. *Lin v. Lin*, 128 N.C. App. 533, 496 S.E.2d 849 (1998) .... However, this Court may pass upon constitutional and public interest question not reviewed below in the exercise of its supervisory jurisdiction. 1 NC Index 4th, § 33 at 566-65, and cases there cited. A ruling from this Court would be significant to the jurisprudence of the State, to the public interest and to due process of law and the equal protection of the laws because of numbers of divorced and divorcing couples every year.

Petition for Writ of Certiorari, No. 511P98-3 at 4-5. Furthermore, in my Petition for Writ of Certiorari, No. 511P98-4, I respectfully prayed as follows:

> The foregoing facts and the decisions of *Howell v. Howell* as well as *Lockamy v. Lockamy* show that said further order for equitable distribution was entered contrary to law, yet the Court of Appeals denied his petition without any fair or substantial support. (Attachments, p. i.

Id. at 5. The Supreme Court of North Carolina denied my petitions on December 2, 1999.

REASONS FOR GRANTING THE WRIT

THE TRIAL COURTS DEPRIVED ME OF MY PROPERTY WITHOUT DUE PROCESS OF LAW AND THE EQUAL PROTECTION OF THE LAWS, BUT THE COURT OF APPEALS AND THE SUPREME COURT OF NORTH CAROLINA

DISMISSED MY APPEALS AND DENIED MY PETITIONS WITHOUT ANY FAIR OR SUBSTANTIAL SUPPORT. NO OTHER ADEQUATE REMEDY IS AVAILABLE TO REVIEW JUDGMENTS LIKE THESE, WHICH WERE ENTERED CONTRARY TO LAW. THUS, THIS IS A MERE DEVICE TO PREVENT THIS COURT FROM REVIEWING THE FEDERAL QUESTIONS.

The foregoing fact shows that the trial courts, contrary to North Carolina law, *supra*, ordered permanent alimony before equitable distribution and equitable distribution after the judgment of absolute divorce. Contrary to settled usages and modes of procedure, the guaranty of due process of law inhibits the taking of one man's property and giving it to another. *Ochoa v. Hernandez y Morales*, 230 U.S. 139, 161 (1913). See also my Petition for a Writ of Certiorari in this Court, No. 97-2008.

Moreover, the Court of Appeals and the Supreme Court of North Carolina dismissed my appeals without an adequate ground. See my Petition for a Writ of Certiorari in this Court, No. 98-1659. They denied my petitions. See my Petition for a Writ of Certiorari in this Court, No. 99-856. No other adequate remedy is available to review judgments like these, which were entered contrary to law. 19 *NC Index* 4^{th}, § 477 at 266, and cases there cited.

All in all, it is a mere device to prevent the review of a decision upon the federal question. *McCoy v. Shaw*, 277 US 302 (1928); and cases therein cited.

> It is settled that a state court may not avoid deciding federal questions and thus defeat the jurisdiction of this Court by putting forward nonfederal grounds of decision which are without any

> fair or substantial support. N.A.A.C.P. v. State of Alabama, 357 U.S. 449, 455, 78 S.Ct. 1163, 1168, 2 L.Ed.2d 1488; Staub v. City of Baxley, 355 U.S. 313, 318-320, 78 S.Ct. 277, 280, 281, 2 L.Ed.2d 302; Ward v. Board of County Com'rs of Love County, 253 U.S. 17, 22, 40 S.Ct. 419, 421, 64 L.Ed. 751.

Wolfe v. State of North Carolina, 364 U.S. 177, 185-86 (1960).

> It is, of course, "incumbent upon this Court ... to ascertain for itself ... whether the asserted non-federal ground independently and adequately supports the judgment." *Abie State Bank v. Bryan*, 282 U.S. 765, 773, 51 S.Ct. 252, 255, 75 L.Ed. 690 (1931).

Michigan v. Long, 463 U.S. 1032, 1039 (1983).

CONCLUSION

For the foregoing reasons in this petition, as well as in the petitions for a writ of certiorari, Nos. 97-2008, 98-1659, and 99-856, certiorari should now be granted.

Respectfully submitted,

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APPENDIX A

NORTH CAROLINA	FILE NO. 90-CVD-04498 IN THE GENERAL COURT
DURHAM COUNTY	OF JUSTICE DISTRICT COURT DIVISION
WEN-CHOUH LIN, Plaintiff vs. ANITA C. S. LIN, Defendant	JUDGMENT FILED OCT 15 1991

THIS CAUSE CAME ON TO BE HEARD, and was heard on July 30 and 31, 1991, by Richard G. Chaney, District Judge Presiding, without a jury, upon the trial and final determination Defendant's claim for alimony, set forth in the First Counterclaim of the Defendant.

APPEARANCES:

For counterclaimant (Defendant): Roger S. Upchurch, of Upchurch & Galifianakis, Durham.
For Plaintiff: John A. Bowman, of Maxwell & Hutson, Durham.

PROCEDURAL STATEMENT:

Plaintiff brought this action for absolute divorce upon the asserted statutory ground of one year of continuous separation. To Plaintiff's complaint, the Defendant filed Answer and Counterclaim, denying that the parties had been separated for one year, and asserting a First Counterclaim for Alimony, a Second Counterclaim for Alimony Pendente Lite and a Third Counterclaim for Equitable Distribution.

The Second Counterclaim, for Alimony Pendente Lite was heard by the undersigned Judge, who signed an Order for Alimony Pendente Lite on February 22, 1991, upon Findings of Fact and Conclusions of Law therein set out.

Both parties having waived a jury, the cause came before the Court for the trial and final determination of the First Counterclaim for Alimony, and for counsel fees.

Upon the evidence, the Court makes the following

FINDINGS OF FACT:

1. Both Plaintiff and Defendant are and have been citizens and residents of Durham County, State of North Carolina, for more than six months next preceding the commencement of this action.

2. Plaintiff and Defendant were lawfully married on April 4, 1964. Thereafter they lived together as husband and wife, and three (3) children were born of the marriage, all of said children being of full adult age and sui juris.

3. Plaintiff and Defendant began living in an apartment at 920 Lambeth Circle, Durham, N.C., in or about June, 1968. Thereafter, in August 1978, Plaintiff and Defendant, and their children, lived together in both apartments as one family.

4. Thereafter, in 1979, Plaintiff rented another apartment at 918 Lambeth Circle, and discontinued renting 922 Lambeth Circle. The evidence of both shows that Plaintiff and Defendant, and their children, thereafter lived together in both 918 and 920 Lambeth Circle as one family.

5. In May, 1979, Plaintiff decided that he could not get along with Defendant, and he did not sleep with Defendant after that date.

6. The Court finds that from May 1979 until September 1990, Plaintiff usually slept in 920 Lambeth Circle and Defendant usually slept in 918 Lambeth Circle; that these

apartments were immediately adjacent to each other in the same building, each opening into a common porch; that both Plaintiff and Defendant and their children had full and free access to both apartments, both day and night; that their children, and the Defendant, moved freely between the apartments, at times one or more of the children sleeping in #920 and at other times changing to #918; that from time to time throughout this period from 1979 to 1990, the Defendant did grocery shopping and cooked or otherwise provided meals, of some of which Plaintiff partook with Defendant and the children; Defendant frequently used the kitchen in the #920 apartment to do the cooking, and when there were family meals, they usually were eaten in #920; that Defendant did laundry for Plaintiff and Defendant and the children, using the washing machine located in #920; Plaintiff and Defendant had the same telephone number, and during much of the time they used the same mailbox. During said period, Plaintiff and Defendant entered into a joint business in 1979 which operated until 1986, and about which they conferred regularly and frequently during said period, and shared duties working in said business; that they had a joint checking account at least until 1983, and joint credit cards until about 1987; that Plaintiff and Defendant jointly entertained overnight house guests once or twice in the early 1980's and had meals with common acquaintances from time to time; that at all times from 1979 until the latter part of September, 1990, Plaintiff and Defendant lived in such manner that the prevailing perception of neighbors and acquaintances was that Plaintiff and Defendant were living together as husband and wife.

7. There was no separation of Plaintiff and Defendant until the latter part of the month of September 1990, at which time Plaintiff moved out of the apartment at 920 Lambeth Circle without the consent or acquiescence of Defendant and without provocation of fault on the part of Defendant, and

there was no sufficient justification, cause or excuse therefor; thereafter Plaintiff willfully failed and refused to provide Defendant with adequate subsistence according to his means and condition and according to Defendant's needs, and such conduct constituted an abandonment of Defendant by Plaintiff.

8. During the marriage of the parties, Defendant from time to time had jobs from which she earned money, but she never had sufficient earnings to support herself, and Plaintiff provided the major part of the funds for Defendant's maintenance and support, and Defendant was actually substantially dependent upon Plaintiff for her maintenance and support, and was dependent upon him at the time he abandoned her in the latter part of September 1990, and had substantial need of maintenance and support from him then and thereafter.

9. From April until June 1991, Defendant has been earning a net take-home pay of approximately $450.00 per month; she is in need of at least $1,000.00 per month for her recurrent reasonable living expenses; in addition she is indebted for cash loans made to her for living expenses, in excess of $3,000.00.

10. At the time of the trial of this cause, Plaintiff had a gross monthly income of $2,540.00 and, after taxes and other required deductions, he had a disposable monthly income of above $1,700.00; that the sum of $1,100.00 is reasonably necessary for his own living expenses, leaving at least $600.00 available from his current earnings for other applications.

11. Defendant is in need of support and maintenance from Plaintiff in the sum of $550.00 per month, which amount Plaintiff is reasonably able to pay.

12. Defendant's attorney, Roger S. Upchurch, has rendered valuable legal services to Defendant since February 7, 1991, the date covered by the Order for Alimony Pendente

Lite dated February 22, 1991; he is a experienced attorney and has spent at least 40 hours from February 7, 1991 to date in providing said service, which have included the preparation and trial of Defendant's counterclaim for alimony, and such services are reasonably worth the sum of $110.00 per hour, which rate does not exceed his customary hourly rates for such services, and does not exceed similar rates of charges made by experienced attorneys in the same community.

And upon the foregoing Findings of Fact, the Court draws the following

CONCLUSIONS OF LAW:

A. Plaintiff and Defendant lived together as husband and wife in the usually accepted sense form the time of their marriage in 1964 continuously until the latter part of the month September, 1990.

B. In the latter part of the month of September, 1990, Plaintiff without legal justification wilfully abandoned Defendant within the meaning and intent of G.S. 50-16.2, and thereafter wilfully failed and refused to provide Defendant with necessary subsistence in accordance with his means and the needs of Defendant; such abandonment took place without provocation or fault on the part of Defendant.

C. Plaintiff is a supporting spouse, and Defendant is a dependent spouse, within the meaning and intent of G.S. 50-16.1.

D. Defendant is entitled to judgment for alimony.

E. Defendant is entitled to an order for reasonable attorney fees to be paid by Plaintiff, in addition to those provided pendente lite in the Order dated February 22, 1991.

NOW, THEREFORE, UPON THE FOREGOING FINDINGS OF FACT AND CONCLUSIONS OF LAW, IT IS

ORDERED:

1. Plaintiff, Wen-Chouh Lin, shall pay to Defendant, Anita C.C. Lin, permanent alimony at the rate of $550.00 per month on or before the 5th day of each month hereafter, beginning the 5th day of September 1991.

2. Plaintiff shall pay to Roger S. Upchurch, attorney for Defendant, attorney fees in the sum of $4,400.00, covering legal services to Defendant from February 7, 1991 to date, to be paid $200.00 per month beginning November 1, 1991, and the first day of each month thereafter, until paid.

3. Plaintiff shall continue monthly payments for Defendant's attorney fees pendente lite provided for in the Order dated February 22, 1991, until the sums therein provided are fully paid.

4. Upon the effective date of the first payment for alimony provided for in this Judgment, the corresponding payments set fourth in the Order for Alimony Pendente Lite dated February 22, 1991 shall terminate.

5. There being no just cause for delay, the Court determines this to be a final adjudication upon Defendant's First Counterclaim for Alimony and Second Counterclaim for Alimony Pendente Lite, but is made without prejudice to Defendant's Third Counterclaim for Equitable Distribution.

Rendered in open court on July 31, 1991, and signed and entered this 11 day of October 1991.

s/ RG Chaney
RICHARD G. CHANEY
District Court Judge

APPENDIX B

NORTH CAROLINA	FILE NO. 94-CVD-2124
	IN THE GENERAL COURT
DURHAM COUNTY	OF JUSTICE
	DISTRICT COURT DIVISION
ANITA C. S. LIN, Plaintiff -vs- WEN-CHOUH LIN, Defendant	SUMMARY JUDGMENT 0F ABSOLUTE DIVORCE
	FILED DEC 13 1994

THIS CAUSE COMES ON TO BE HEARD before the undersigned Judge, upon Plaintiff's Motion for Summary Judgment under Rule 56, N.C. Rules of Civil Procedure and under authority of G.S. 50-10.

IT APPEARS that this is an action for absolute divorce under G.S. 50-6; that the Defendant has filed answer, pro se, to the complaint; that Defendant has been properly served with notice of hearing upon said Motion for Summary Judgment;

And it further appears to the Court from the verified complaint, the defendant's answer and admissions of record, the Plaintiff's and Defendant's affidavits and other records of this court, that there is no genuine issue as to any material fact to be tried by a jury, and that the moving party is entitled to have the Court find the facts and enter judgment as a matter of law under G.S. 50-10.

The Court therefore makes the following

FINDINGS OF FACT:

1. The Plaintiff has been a citizen and resident of the State of North Carolina for more than six months next preceding the commencement of this action.

2. The Plaintiff and the Defendant were lawfully married to each other as alleged in the Complaint.
3. The Plaintiff and the Defendant have lived continuously separate and apart from each other for more than one year next preceding the commencement of this action.

THE COURT FURTHER FINDS that three children were born of the marriage of the parties, all of whom are of full adult age and *sui juris*; that there is now pending in this Court a claim for alimony and support and for equitable distribution, to wit, No. 90-CVD-4498, in which action a judgment for alimony was signed and entered on 11 October 1991 by R.J. [sic] Chaney, Judge Presiding, which judgment also expressly was made without prejudice to Anita C.S. Lin's claim for equitable distribution; that the claim for equitable distribution should survive this judgment and remain pending on its merits in this Court, in File No. 90-CVD-4498.

And upon the foregoing Findings of Fact, the Court draws the following

ONCLUCSIONS OF LAW:

1. The Court has full jurisdiction of the parties and of the subject matter of this action, and full authority to find the facts and render judgment.

2. There is no genuine issue as to any material fact on the Plaintiff's claim for absolute divorce, and the Plaintiff is entitled to a summary judgment of absolute divorce from the Defendant under N.C.G.S. 50-6 and 50-10.

NOW THEREFORE, upon the foregoing Findings of Fact and Conclusions of Law, it is

ORDERED, ADJUDGED AND DECREED:

That Summary Judgment is hereby granted; and the bonds of matrimony heretofore existing between the Plaintiff and the Defendant be and they are hereby forever dissolved, and the Plaintiff is hereby granted an absolute divorce from the Defendant.

IT IS FURTHER ORDERED AND DECREED that the Plaintiff's claim for equitable distribution shall survive the entry of this judgment, and shall remain pending for hearing upon its merits in this Court, in File No. 90-CVD-4498.

This 13 day of December 1994.

s/ WY Manson
JUDGE PRESIDING
District Court, Fourteenth
Judicial District of North Carolina

APPENDIX C

NORTH CAROLINA DURHAM COUNTY	FILE NO. 90-CVD-04498 IN THE GENERAL COURT OF JUSTICE DISTRICT COURT DIVISION
WEN-CHOUH LIN, Plaintiff vs. ANITA C. S. LIN, Defendant	ORDER OF DISTRIBUTION OF MARITAL PROPERTY (QUALIFIED DOMESTIC RELATIONS ORDER) FILED JAN 8 1997 at 10:01 AM

THIS CAUSE CAME ON TO BE HEARD before the undersigned District Court Judge upon the wife C. S. Lin's Counterclaim for equitable Distribution of the marital property of the parties. The Court, after hearing the evidence and examining the record, makes the following

FINDINGS OF FACT:

1. The plaintiff and defendant were formerly husband and wife, having been married to each other on the 4th day of April, 1964; they separated in September 1990, deemed to be September 30, 1990, and divorced on the 13th day of December, 1994.

2. The plaintiff and the defendant have been residents of the State of North Carolina for a number of years, and this Court has both personal and subject matter jurisdiction of this action.

3. The Plaintiff-husband Wen-chouh Lin's Social Security number is 134-34-8076. His last known address in North Carolina was at 816 Louise Circle, Durham, North Carolina 27705.

4. The Defendant-wife Anita C.S. Lin's Social Security number is 558-74-1124. She currently maintains a residence in North Carolina at 918 Lambeth Circle, Durham, North Carolina 27705.

5. During the marriage of the parties, they acquired and accumulated the retirement benefits under the Duke University Faculty and Staff Retirement Plan which includes the major part of TIAA/CREF benefits described in detail below. Except for such retirement benefits, there are no other significant assets of the parties to be divided as marital property, and no identifiable marital liabilities to be divided.

6. The Court finds that an equal distribution of the marital property would not be equitable and that it would be equitable to distribute to Defendant-wife Anita C. S. Lin more than one-half of the marital property, for the following reasons:

6.1 The separation of the parties was brought about by the fault of the Plaintiff-husband Wen-chouh Lin who abandoned the Defendant-wife Anita C.S. Lin without adequate provocation in the latter part of September 1990 when the Defendant-wife entered the hospital for major surgery. The Plaintiff-husband Wen-chouh Lin thereafter willfully failed and refused to provide adequate support for Defendant-wife Anita C.S. Lin and a Judgment for alimony against Plaintiff-husband Wen-chouh Lin and in favor of Defendant-wife Anita C.S. Lin was entered herein on October 11, 1991 .

6.2 Defendant-wife Anita C.S. Lin was a faithful marital partner during the marriage and contributed at least her full share of time and effort, both directly and indirectly to the accumulation of the marital property through her services as spouse, mother of the children of the parties, homemaker and wage earner.

6.3 Defendant-wife Anita C.S. Lin has had serious medical and health problems that hampered her efforts to support herself since she was abandoned by the Plaintiff-husband Wen-chouh Lin in September 1990. She has had several jobs during said time of abandonment, but has never earned enough to support herself, and has found it necessary to borrow money for living expenses, causing her to incur debts of several thousands of dollars.

6.4 The Plaintiff-husband Wen-chouh Lin at all times since the entry of alimony judgment, until he took a leave of absence from his job in the latter part of 1996, had been fully and gainfully employed, with a disposable monthly income increasing from approximately $1,700.00 in 1991 to approximately $2,092.00 in February 1996. In spite of such earnings, he has been found in contempt of court several times for willful failure and refusal to comply with the Court's orders. At the time of this hearing, Plaintiff-husband Wen-chouh Lin was in contempt under order of the court, and as of Jan. 8, 1997 was in default in payments of alimony and attorney fees as shown by the Court's records in the amount of $21,835.57. A Judgment for Alimony Arrears against Plaintiff-husband Wen-chouh Lin and in favor of the Defendant-wife Anita C.S. Lin was entered in this action on October 22, 1996, in the amount of $9,869.57.

6.2 The Sheriff of Durham County has been unable to find the Plaintiff-husband Wen-chouh Lin for service of Orders to Show Cause in this Action. In attempting to locate the Plaintiff-husband Wen-chouh Lin for service of Orders to Show Cause, the Sheriff noted in his Return that the plaintiff's telephone was disconnected and that he had taken a

leave of absence from his job at Duke University. He was located by telephone at one time in the State of Georgia. The Court finds that the Plaintiff-husband Wen-chouh Lin left the State of North Carolina with intent to defraud his creditors, including the Defendant-wife Anita C.S. Lin.

7. Plaintiff-husband Wen-chouh Lin, hereinafter referred to as "plaintiff" or "participant", is presently employed by Duke University in Durham, North Carolina, as a librarian and is a participant in the Duke University Faculty and Staff Retirement Plan, which includes benefits through Teachers' Insurance and Annuity Association - College Retirement Equity Fund, hereinafter "TIAA/CREF", as follows:

(a) TIAA/CREF Retirement Annuities:
TIAA Contract No. A219858-6
CREF Certificate No. P137173-6

(b) TIAA/CREF Supplemental Retirement Annuities:
TIAA Contract No. K164744-1
CREF Certificate No. J164744-3.

8. So much of the Plaintiff's benefits under the Duke University Faculty and Staff Retirement Plan as have accumulated from the marriage of the parties on April 4, 1964, until the deemed date of separation on September 30, 1990, are marital property pursuant to the provisions of N.C.G.S. § 50-20 et. seq., and pursuant to federal statute, North Carolina law and the provisions of the above retirement accounts. The Court may order to be transferred to the defendant under a Qualified Domestic Relations Order a portion of the assets of the above retirement accounts.

9. The Court finds the following division of the marital property to be equitable:

9.1 The Defendant-wife Anita C.S. Lin, as Alternate Payee, should receive, and the Plan Administrator should be authorized to take from these

accounts, fifty-five percent (55%) of the current value of the above retirement accounts accumulated from April 4, 1964 until and including September 30, 1990.

9.2 The current value should reflect interim interest and divided earnings in TIAA and investment experience in CREF until the transfer is recorded by TIAA-CREF.

AND UPON THE FOREGOING FINDINGS OF FACT, THE COURT MAKES THE FOLLOWING

CONCLUSION OF LAW:

1. There are no identifiable marital liabilities to be divided between the parties.

2. The only identifiable marital property to be divided between the parties are the benefits under the Duke University Faculty and Staff Retirement Plan in which the Plaintiff-husband Wen-chouh Lin is enrolled, consisting of TTAA and CREF accounts described in Findings of Fact Nos. 8 and 9 above.

3. The following division of the marital property will effect an equitable distribution of the marital property:

3.1 Defendant-wife Anita C.S. Lin, as Alternate Payee, is entitled to receive, from the TIAA and CREF accounts in which the Plaintiff-husband Wen-chouh Lin is the Participant, fifty-five percent (55%) of the current value of the TIAA/CREF retirement accounts accumulated from April 4, 1964, until and including September 30, 1990.

3.2 The current value should reflect interim interest and divided earnings in TIAA and investment experience in CREF until the transfer is recorded by TIAA-CREF.

3.3 All ownership and interest in the balance of the TIAA Annuities and the CREF Certificate, except that set aside as aforesaid for the Defendant-wife Anita C.S. Lin, should continue to belong to the Plaintiff-husband Wen-chouh Lin.

NOW, THEREFORE, IT IS CONSIDERED, ORDERED, ADJUDGED AND DECREED:

1. Defendant-wife Anita C.S. Lin shall have as her sole and separate property the following:

> From the TIAA and CREF accounts in which the Plaintiff-husband Wen-chouh Lin is the Participant, Fifty-five percent (55%) of the current value of the TIAA/CREF retirement accounts accumulated from April 4, 1964, until and including September 30, 1990.

2. The current value should reflect interim interest and divided earnings in TIAA and investment experience in CREF until the transfer is recorded by TIAA-CREF.

CONCLUSION OF LAW

3. The accounts so awarded to Defendant-wife shall be immediately assigned and set aside in a new retirement account or accounts solely in the name of Anita C.S. Lin, the defendant, as Alternate Payee. All ownership rights in the account as so set aside, shall belong to Defendant-wife Anita C.S. Lin, including, if elected, death benefits to survivors.

2. Plaintiff-husband Wen-chouh Lin shall receive as his sole and separate property the following:

> All ownership and interest in the balance of the TIAA Annuities and the CREF Certificate, other than that set aside as aforesaid for the Defendant-wife Anita C.S. Lin, shall continue to belong to the Plaintiff-husband Wen-chouh Lin.

The parties are directed to timely submit to TIAA-CREF all documents, including Releases that are required to finalize this order.

This Order:

a. Does not require any Plan to provide any type of form of benefit, or any option, not otherwise provided under the Plan.

b. does not require TIAA-CREF to provide increased benefits and

c. does not require the payment of benefits to an Alternate Payee under another Order previously determined to be a Qualified Domestic Relations Order.

5. This Order is intended to be a Qualified Domestic Relations Order (QDRO) and shall be entered and submitted to the Plan Administrator, embodying the appropriate provisions, consistent herewith, to authorize and direct the implementation of the equitable distribution of the retirement benefits.

6. This cause is retained by the Court for such other and further orders as may be proper and appropriate to implement this Order.

Rendered on Jan. 8, 1997, and signed and entered on Jan. 8, 1997.

s/ RG Chaney
DISTRICT COURT JUDGE
14TH JUDICIAL DISTRICT
OF N.C.

APPENDIX D

No. COAP99-383
North Carolina Court of Appeals

****

WEN-CHOUH LIN,
Plaintiff-Appellant,
vs.
ANITA C. S. LIN,
Defendant-Appellee.

From Durham
(90CVD04498)

****

ORDER

The following order was entered:

The petition filed in this cause on the 8th day of July 1999 designated "Petition for Writ of Certiorari" is denied.

By order of the Court this the 28th day of July 1999.

The above order is therefore certified to the Clerk of District Court Durham County.

Witness my hand and official seal this the 28th day of July 1999.

s/ John H. Connell
Clerk of North Carolina
Court of Appeals

CSC Orig
cc:
Mr. Wen-chouh Lin
Mr. Nick Galifianakis

Seal of the Court of Appeals of North Carolina

APPENDIX E

No. COAP99-384
North Carolina Court of Appeals

****

ANITA C. S. LIN,
Plaintiff,

vs.

WEN-CHOUH LIN,
Defendant.

From Durham
(94CVD2124)

****

ORDER

The following order was entered:

The petition filed in this cause on the 8th day of July 1999 designated "Petition for Writ of Certiorari" is denied.

By order of the Court this the 28th day of July 1999.

The above order is therefore certified to the Clerk of District Court Durham County.

Witness my hand and official seal this the 28th day of July 1999.

s/ John H. Connell
Clerk of North Carolina
Court of Appeals

CSC Orig
cc:
Mr. Wen-chouh Lin
Mr. Nick Galifianakis

Seal of the Court of Appeals of North Carolina

APPENDIX F

No. 511P98-3 FOURTEENTH DISTRICT

SUPREME COURT OF NORTH CAROLINA

****

(Wen-Chouh Lin v Anita C.S. Lin)

Wen-Chouh Lin

v

Anita C.S. Lin

From NC Court of Appeals
(COA99-384 [i.e. 383])

****

ORDER

Upon consideration of the petition filed by Plaintiff in this matter for a writ of certiorari to review the order of the North Carolina Court of Appeals, the following order was entered and is hereby certified to the North Carolina Court of Appeals:

"Denied by order of the Court in conference, this the 2nd day of December 1999.

s/ Freeman, J.
For the Court"

WITNESS my hand and the seal of the Supreme Court of North Carolina, this the 6th day of December 1999.

Christie Speir Cameron
Clerk, Supreme Court of
North Carolina

s/ Carol B. Templeton
Assistant Clerk

Copy to:
North Carolina Court of Appeals
Mr. Wen-Chouh Lin, Pro Se, For Self
Mr. Nick Galifianakis, Attorney at Law,
For Anita C.S. Lin
Mr. Ralph A. White, Appellate Court Reporter
West Publishing Company
Lexis-Nexis

Seal of the Supreme Court of
the State of North Carolina

APPENDIX G

No. 511P98-4 FOURTEENTH DISTRICT

SUPREME COURT OF NORTH CAROLINA

****

(Anita C.S. Lin v Wen-Chouh Lin)

Anita C.S. Lin
v
Wen-chouh Lin

From NC Court of Appeals
(COA99-384)

****

ORDER

Upon consideration of the petition filed by Defendant in this matter for a writ of certiorari to review the order of the North Carolina Court of Appeals, the following order was entered and is hereby certified to the North Carolina Court of Appeals:

"Denied by order of the Court in conference, this the 2nd day of December 1999.

s/ Freeman, J.
For the Court"

WITNESS my hand and the seal of the Supreme Court of North Carolina, this the 7th day of December 1999.

Christie Speir Cameron
Clerk, Supreme Court of
North Carolina

s/ Carol B. Templeton
Assistant Clerk

Copy to:
North Carolina Court of Appeals
Mr. Wen-Chouh Lin, Pro Se, For Self
Mr. Nick Galifianakis, Attorney at Law,
For Anita C.S. Lin
Mr. Ralph A. White, Appellate Court Reporter
West Publishing Company
Lexis-Nexis

Seal of the Supreme Court of
the State of North Carolina